JULIE R. HAYSLIP

IBLA 2000-242 Decided September 5, 2001

Appeal from a decision of the Carson City (Nevada) Field Office, Bureau of Land Management, cancelling a Private Maintenance and Care Agreement for Wild Horses or Burros and taking immediate possession of wild horses. NV-030-00-01.

Set aside and remanded with instructions.

1. Wild Free-Roaming Horses and Burros Act

   BLM improperly cancelled a private maintenance and care agreement for wild horses and took immediate possession of the horses on the basis that the adopter had failed to provide adequate shelter and feed for her adopted horses, where BLM did so (1) during the period of an indefinite extension of time granted to the adopter to provide shelter without providing notice that the period for compliance had ended and that the horses were about to be seized; and (2) on the strength of an unconfirmed report by a third party that the horses were about to be denied feed.

2. Wild Free-Roaming Horses and Burros Act

   Where an adopter, over a 8-month period following the implementation of a private maintenance and care agreement, failed to provide shelter for adopted horses as required by that agreement, the return of the horses to the adopter is properly conditioned upon a showing that she has, in fact, provided shelter as required.

APPEARANCES: Julie R. Hayslip pro se; David K. Grayson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Julie R. Hayslip (nee Barraque) has appealed from the April 13, 2000, decision of the Carson City (Nevada) Field Office, Bureau of Land Management (BLM), cancelling an August 20, 1999, Private Maintenance and Care Agreement for Wild Horses or Burros (PMACA) and taking immediate

possession of her adopted wild horses. BLM's April 2000 decision was placed in full force and effect pursuant to 43 CFR 4770.3(b).

On August 20, 1999, Hayslip and BLM entered into a PMACA providing for the adoption of two wild horses (Freeze Mark Nos. 97210327 and 97210602) pursuant to section 3 of the Wild Free-Roaming Horses and Burros Act (WFHBA), as amended, 16 U.S.C. § 1333 (1994), and implementing regulations at 43 CFR Part 4700. The adoption was routinely subject to a minimum 1-year provisional period, following which title to the adopted horses could be transferred to Hayslip.

Hayslip, who lives in Fallon, Nevada, represented in her application for the PMACA that she had two corrals (30 x 50 and 100 x 100-feet) and was in the process of constructing a wooden shelter (of undisclosed size) for two wild horses. She also stated that she would personally care for the horses, providing them an adequate supply of feed and water. The PMACA, as issued, provided for a different arrangement, where the horses would be kept at a facility owned by Ms. Geri Van Riper in Fallon, Nevada.

Following a February 22, 2000, inspection of Van Riper's facility, at which Hayslip's two adopted horses were being maintained, BLM notified Hayslip by letter dated February 28, 2000, that she was in violation of 43 CFR 4750.3-2(a)(3)(iii), which requires that shelter be made available to adopted wild horses in order to mitigate the effects of inclement weather and temperature extremes: "Your adopted horses do not have access to shelter of any kind." (Letter from BLM, dated Feb. 28, 2000, at 1.) BLM informed Hayslip that she would have 2 weeks from receipt of the letter to correct the violation, failing in which BLM would cancel the PMACA and take possession of the horses. 1/ Hayslip received the letter on February 29, 2000.

Hayslip responded to BLM by telephone on March 14, 2000, explaining that she had not yet had a chance to build a shelter for the horses, but would do so at Van Riper's facility during the upcoming weekend (March 18 and 19). (BLM Memorandum to the File dated Mar. 14, 2000.) BLM agreed to that course of action, after confirming that Van Riper was amenable to the proposed construction. Id. BLM did not specify the deadline for compliance, but, since it noted that it "agreed with [Hayslip's] proposal," we presume that BLM accepted March 19, 2000, as the deadline. Id.

1/ It appears that BLM initially assumed that Van Riper's facility had a shelter for the two adopted horses, having made no inspection of that facility before approving Hayslip's PMACA application. See E-Mail to BLM from President, Wild Horse Mentors, dated Feb. 18, 2000 ("As I understand it, [Hayslip's] application was accepted in the Carson City office proper, so no on-site inspection was made"); Memorandum to the Board from BLM, dated May 10, 2000. Despite BLM's intimation to the contrary (Memorandum to the Board, dated May 10, 2000), we find nothing inaccurate in the information provided by Hayslip concerning the availability of a shelter, either in her application or the PMACA itself. She never stated that Van Riper's facility had a shelter.

Shortly thereafter, Hayslip notified BLM that she had decided to move the horses from Van Riper's facility to a different facility. 2/ (Decision at 1.) However, that did not occur. Van Riper notified BLM by letter dated April 12, 2000, that Hayslip had promised on March 17, 2000, to remove the two horses from Van Riper's facility, but had failed to do so.

More significantly, Van Riper also stated in the April 12, 2000, letter that Hayslip was in arrears on her boarding and feed fees, having not paid anything since March 17, 2000, and that Van Riper could no longer afford to feed the horses after April 13, 2000. She asked BLM to remove the horses. It was apparently largely on the strength of this letter from Van Riper that BLM proceeded to repossess the horses.

BLM immediately contacted Hayslip by telephone on April 13, 2000, leaving a message that, since she had failed to provide shelter for her two adopted wild horses, it would cancel her PMACA and repossess them. (Memorandum to the Files from Wild Horse and Burro Specialist (WHBS), dated Apr. 13, 2000.) Despite the fact that it had been unable to reach Hayslip to receive any explanation from her, BLM proceeded immediately to issue its decision cancelling the PMACA and repossessing the horses that same day. BLM cancelled the PMACA because (it held) Hayslip had, as of April 12, 2000, failed to provide adequate care for her two adopted wild horses, despite BLM's February 28, 2000, notice to do so: "Because your adopted horses do not have shelter, nor is there any guarantee that they will have adequate feed, it is in the best interest of the horses that we cancel your PMACA." (Decision at 2.) BLM also stated that it would take immediate possession of the horses and did so on the same day that it issued its decision. See BLM Response to Appeal Points. BLM acted pursuant to 43 CFR 4770.2(b).

Hayslip appealed from BLM's April 2000 decision. In her notice of appeal/statement of reasons for appeal (SOR), appellant does not deny that her two adopted wild horses have never had access to any kind of shelter during the entire period of time at issue here, which lasted from when she took possession of them in September 1999 until BLM repossessed them in April 2000. Indeed, she admits that Van Riper's facility, where the horses were kept, did not have any shelter even for Van Riper's own horses. (SOR at 2-3.) Rather, she argues that she has intended all along to provide them with shelter, detailing the steps she has taken toward that end, and that, in the meantime, the two horses had been well cared for.

Appellant notes that, when she initially took possession in September 1999, she already had plans to purchase a property "in Golden Valley," which had a barn, stalls, and arena, but that the plan had fallen through by December 1999: "The mustangs were prospering so I was

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2/ We cannot fix the date of that conversation, as there is nothing in the BLM casefile documenting it. In its April 2000 decision, BLM reports that the conversation occurred several days after the Mar. 14 conversation. (Decision at 1; see BLM Response to Appeal Points.)

not worried about their current situation." (SOR at 2.) She states that "in early March" 2000 she arranged to board her horses at another location, which had a barn, shelter, and five acres of pasture, but that this deal was called off because the other party had made a prior arrangement. Id. at 3. Appellant states that she placed an advertisement in local feed stores and that she thereafter "spent a week going around and looking at all the offers" regarding space for her horses that she received in response. She notified Van Riper that she would be moving the horses "by the end of March or early April." Id. She states that she finally decided on a suitable location and informed Van Riper, on April 12, 2000, that she was preparing to move the horses "on the weekend of April 15th," whereupon Van Riper contacted BLM: "[S]he called BLM and told them that she was not feeding the horses and no longer wanted them on her property, to please come get them. So of course they had no recourse but to come and pick them up, after all, they feared for their health and safety, which I commend them for." Id. at 3-4.

Appellant also asserts that she has never been in arrears with her boarding fees, and that Van Riper's statements to the contrary stem from her inadequate bookkeeping, which was later corrected (but without notice to BLM). (SOR at 2-3.) Further, she states that she, in fact, provided more than enough feed for her two horses:

> I had purchased 4 tons of hay on Dec. 24th for my two mustangs. * * * By the time the [BLM] inspector arrived in late February [2000], he estimated that I had only 2 weeks left of hay. I seriously doubt that 2 small mustangs can consume nearly 4 tons of hay in only 2 months! This woman was using my hay to feed her own horses! 4 tons of hay should last two average size horses (and mine were small) at least 5 months, more likely 6 months. This would be the month of June before I needed to buy more hay.

Id. at 3. Appellant pleads with the Board to reverse BLM's April 2000 decision, cancelling her PMACA and to return the horses to her, noting that she has since "secured a new pasture" from a woman who is "ready to hook up her trailer and come get them whenever I receive word," and ordered a "shelter kit from Equishelter in Oregon," which is "temporarily on hold" pending the completion of these proceedings. (SOR at 5.)

[1] Regulation 43 CFR 4770.2(b) provides that BLM has the discretionary authority to cancel a PMACA and repossess an adopted wild horse when the adopter fails to comply with the terms and conditions of the PMACA. John Sampson, 150 IBLA 92, 96 (1999); Mark L. Williams, 130 IBLA 45, 48 (1994). An adopter is generally required by such terms and conditions to be financially responsible for the "proper care and treatment" of any wild horse covered by her PMACA. 43 CFR 4750.4-1; see John Sampson, 150 IBLA at 95-96; Thana Conk, 114 IBLA 263, 275 (1990). Regulation 43 CFR 4750.3-2(a) specifies the standards of care required of an adopter, including that she

> (3) Have adequate feed, water, and facilities to provide humane care to the number of animals requested. Facilities

shall be in safe condition and of sufficient strength and design to contain the animals. The following standards apply:

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(iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes. The authorized [BLM] officer may require that the shelter be a structure, which shall be well-drained and adequately ventilated;

(iv) Feed and water shall be adequate to meet the nutritional requirements of the animals, based on their age, physiological condition and level of activity[.]

When BLM determines that an adopter is not in compliance with a requirement of a PMACA, it is not required to cancel the agreement, but may, in accordance with 43 CFR 4760.1(d), provide the adopter with notice and an opportunity (consisting of a "reasonable time") to take specific corrective action, failing which the PMACA may be cancelled and the horse repossessed. See John Sampson, 150 IBLA at 93; Larry Vanden Heuvel, 145 IBLA 309, 316 (1998); William J. Ahrndt, 132 IBLA 126, 127, 129 (1995); Mark L. Williams, 130 IBLA at 46, 48. Except in cases where the horses are in physical distress, granting notice and opportunity to correct serves the valuable purpose of avoiding mistakes and preventing horses from being seized in inappropriate cases.

As noted above, BLM's decision identifies two specific grounds for its decision to cancel the PMACA and repossess the horses: (1) The horses did not have shelter, and (2) there was no guarantee that they would have adequate feed. We consider each ground in turn.

We note that there is no dispute that appellant failed to provide shelter as expressly required by the PMACA. The question remains whether BLM could properly cancel the PMACA on account of that failure. BLM initially provided appellant with notice and an opportunity to take specific corrective action concerning providing shelter with the issuance of its February 28, 2000, letter affording appellant 14 days from her receipt of that to bring herself into compliance by providing shelter. However, we hold, that time limit was effectively modified when the deadline for compliance was later extended.

The initial 14-day time period expired on March 14, 2000. When appellant contacted BLM on that date, BLM agreed to an extension until March 19, 2000. Importantly, that extension was followed by an additional extension. In its April 2000 decision, BLM noted that, when appellant talked with BLM "[s]everal days" after the March 14 conversation, she stated that, in lieu of constructing a shelter at Van Riper's facility, she was going to move the horses to a different facility, where they would have shelter. At that time, BLM did not advise appellant that, because she had not met the deadline set by its February 28 letter (later extended to March 19, 2000), her PMACA would be cancelled and BLM would take possession of the horses. To the contrary, it advised her that it would not

cancel the PMACA because "it appeared that [she was] going to resolve the situation soon." (Decision at 1.) Thus, BLM implicitly accepted her plan to move the horses to a different facility where shelter would be provided, while noting that it would have to approve such transfer. 3/ There is no indication that BLM demanded that appellant immediately provide this information or established any deadline for supplying it in the future. Rather, it seems clear that BLM simply expected a response at some later time. All this amounted to affording appellant an additional, indefinite extension to comply with BLM's February 28 letter. 4/

In these circumstances, we hold, where BLM established a schedule for correction but later extended the time for compliance indefinitely, the notice and an opportunity to take corrective action contemplated by 43 CFR 4760.1(d) was not provided to appellant. In the absence of compliance with that regulation, BLM could not properly abruptly cancel the agreement or immediately impound the horses. See Noel Benoist, 131 IBLA 138, 139-42 (1994). Since it was justifiably dissatisfied with the fact that appellant had still not provided shelter for the two horses (or contacted BLM regarding the location of the new pasture where shelter would be provided), we think that BLM's next step should have been to advise appellant that the indefinite extension would end on a date certain and that she was required by that deadline to prove that she had provided shelter, failing which her PMACA would be cancelled and the horses repossessed.

BLM's April 2000 decision to cancel appellant's PMACA, and especially to take immediate possession of the horses, also stemmed from the second announced ground, namely appellant's alleged failure to ensure an adequate supply of feed for the horses, or to take financial responsibility for providing feed. See Decision at 2; Response to Appeal Points. We are unable to affirm BLM's decision on this ground.

Nothing in the record shows that BLM determined for itself, by inspecting the facility where the two horses were being kept by appellant or by directly questioning appellant, that she had ever failed to have adequate feed provided for them. Apart from Van Riper's April 12, 2000, letter, there is nothing in the record even hinting at the fact that the

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3/ The Terms of Adoption provide: "Adopters shall not transfer animals for more than 30 days to another location * * * without the prior approval of the authorized [BLM] officer." See 43 CFR 4750.4-1. BLM indicated that "We advised her that pursuant [to] the Terms of Adoption she would need to provide us with the location of the new pasture." (Emphasis added.) 4/ BLM admittedly decided not to enforce the original deadline "[b]ased on several telephone conversations with Ms. Hayslip" (Response to Appeal Points), namely the March 14 conversation and the "subsequent" conversation which took place the "following week." Id. Clearly based on one and then the other conversation, BLM deliberately delayed taking any adverse action, leaving appellant with the impression that cancellation of the agreement and impoundment of the horses was not imminent.

horses were not being provided with adequate feed, or were not going to be provided with adequate feed in the future. 5/

In her April 12 letter, Van Riper alleged that appellant was in arrears on her boarding fees and informed BLM that since she (Van Riper) did not have the money, she could "not provide [the horses] with feed after the 13th of April." We are not satisfied that such allegation provided justification for impoundment. It was possible that Van Riper was not telling the truth; it was also possible that appellant could have made alternative plans for supplying the horses with feed if she had simply been made aware that Van Riper had refused to continue feeding them. We find nothing indicating that BLM provided any opportunity either for appellant to respond to Van Riper's allegations or to make alternative arrangements for feeding the horses. 6/ Rather, BLM precipitously cancelled the PMACA and took possession of the horses before appellant could respond to the call. Appellant states that she, in fact, did not receive the April 13 message until April 14, 2000, since she was not at home on that day. (SOR at 4.) That hardly reflects any lack of care on her part, since she had every reason to believe that Van Riper was taking care of her horses.

We stress that there is no evidence that the horses were in any physical distress at the time of impoundment. Cancellation and impoundment are not appropriate, absent any immediate threat to the welfare of the animals, where the adopter is not afforded any opportunity to submit evidence demonstrating that an adequate supply of feed is, in fact, guaranteed. Noel Benoist, 131 IBLA at 139-42; cf. Mark L. Williams, 130 IBLA at 46, 48 (Where, prior to cancellation, BLM formally notified adopter in writing that facility owner had stated that there was dispute regarding boarding fees; where BLM provided time for adopter to respond; and where responses confirmed that the dispute threatened the horses' supply of feed.) No such opportunity was afforded appellant.

Further, even where an opportunity to respond is granted, the evidence must show that the adopter abandoned the horse or did not fulfill his financial obligation to provide care for it. John Sampson, 150 IBLA 92, 95 (1999). BLM had no adequate basis here to conclude that appellant

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5/ We note that BLM states in its pleading in this appeal that Van Riper had contacted it "several times" since Feb. 22, 2000, asking that BLM remove the two horses from her facility, since appellant was in arrears. (Response to Appeal Points.) Appellant alludes to the fact that Van Riper called BLM on April 12, 2000, on the same date her letter arrived at BLM. There is no support in the record for any other conversations with Van Riper. Further, nothing shows that BLM apprised appellant of Van Riper's allegations.

6/ BLM did attempt to contact appellant, by telephone, on Apr. 13, 2000. However, while BLM reports its employee left a message on appellant's answering machine advising appellant that Van Riper had "said that Ms. Hayslip still owes her board," there is no indication that BLM attempted to inform appellant that Van Riper's feed supply would, as a result, be cut off on that day. (Memorandum to the Files from WHBS, dated Apr. 13, 2000.)

had abandoned these horses or that she had failed to fulfill her financial obligations. BLM had no reason to believe that appellant could not successfully renegotiate a contract with Van Riper to temporarily care for the horses until they were relocated, bring feed to them herself, or make some other arrangement. By acting precipitously, BLM foreclosed any opportunity for appellant to cure the problem.

We, therefore, conclude that BLM, in its April 13, 2000, decision, improperly cancelled appellant's August 20, 1999, PMACA, based on her failure to provide adequate shelter and feed for her two adopted wild horses. It is accordingly set aside.

Appellant represents on appeal that she can provide shelter for these horses as required by the express terms of the adoption agreement. In these circumstances, it is appropriate to remand the matter to BLM with instructions to provide appellant a reasonable time not less than 45 days to demonstrate that she has provided shelter satisfying the requirements of the agreement. During this time, the horses shall remain in BLM's custody. Should appellant fail to timely meet the requirements of the agreement concerning shelter, BLM may then take appropriate action to cancel the agreement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further action consistent with this decision.

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David L. Hughes
Administrative Judge

I concur:

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C. Randall Grant, Jr.
Administrative Judge